ए॰ए॰ 970/95

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000058401

# APPEAL OF PRISONER

Division Bench (Criminal)

No. 2421/47 Name लालचन्द लोधी आत्मज भैरोलाल

Father's name भानिक अधमार, धाना केन्द केवाट रांव

Residence जिला रायगढ़ (म॰प्र॰) Age ३२ वर्ष

Sentenced to आजीवन कारावास On ३०/६/१९९५

Under section ३०२ भा॰ दं॰ वि॰ by अपर सत्र न्यायाधीश रायगढ़ (म॰प्र॰)

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It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... 29/6/95

2 Date on which copy received ... 4/7/95

3 Date on which Appeal sent ... 7/95

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 2421/47 Name लालचन्द लोधी आत्मज भैरोलाल

Confined in केन्द्रीय Jail रायपुर (म॰प्र॰)

No. ३७७ / ८७७ / Dated ... 199 5/7/95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ मान्य मेजिस्ट्रेट उच्च न्यायालय जबलपुर (म॰प्र॰)

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

सेलजा. मिश्र अधिवक्ता
रजि॰ नं॰ ३३२०/३४७ ई 84/95

Superintendent
केन्द्रीय जेल, रायपुर (म॰ प्र॰)
Jail

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Date of receipt in ... office ... 12/6/95 10:5

Date of receipt record to accompany the ... With the Judgment

Memo of Appeal to the Appellate court ...

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No ... Date ... 199

Forwarded to the ...

Date of receipt in Appellate Court ...

High Court of Madhya Pradesh
JABALPUR
-11 JUL 1995
Reg. No. 337
Recept Clerk
High Court, Jabalpur

( P. T. O. )

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(13)

# आदेश पत्रक

मामला क्रमांक G.A.970/95 सन् ~~200~~

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | **Division Bench: -**<br>**Hon'ble Mr. L.C. Bhadoo and**<br>**Hon'ble Mr. Dhirendra Mishra, JJ.**<br><br>**10-2-2006**<br>Mr. Abhijeet Sarakar, counsel for the appellant.<br>Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.<br>Oral judgment dictated on Dais.<br><br>**Per Dhirendra Mishra, J**: -<br>The appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. as he stands convicted and sentenced under Section 302 of the I.P.C. to undergo imprisonment for life vide the impugned judgment dated 29th June, 1995, passed by the Sessions Judge, Rajnandgaon in Sessions Trial No.84/94.<br><br>Case of the prosecution, in brief, is that the appellant and deceased Sunderlal @ Radhelal are real brothers. Deceased Sunderlal who is younger brother of the appellant had illicit relationship with wife of the appellant Jainabai and he had eloped with Jaina Bai some three months prior to the incident, and the appellant had brought his wife only recently. There was a Panchayat convened regarding the above dispute and in the said Panchayat deceased Sunderlal had undertaken that now onwards he shall not continue his relationship with the wife of the appellant. On 30th May, 1994, at about 2 a.m. accused Lakhanlal went to the house of Shivlal (PW-5) and stated that he has killed Sunderlal by axe. Thereafter, he also stated this fact to Moti, Videshram (PW-6), Dularva (PW-7), Uderam, Jumman etc. Villagers gathered, Kotwar Heeralal was called and before Heeralal also the | |

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# आदेश पत्रक

मामला क्रमांक G.A.970/95 सन् ~~200~~

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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appellant confessed his guilt. All the persons went to the house of Sunderlal and found Sunderlal dead lying over the cot. Thereafter, villagers took accused Lakhanlal along with the weapon of offence axe to Police Station and first information report Ex.P-17 was lodged.

After registering the crime, the investing officer proceed for the scene of occurrence and during investigation, inquest report of Ex.P-11 was prepared in the presence of witnesses. The dead body was sent for post-mortem to Community Health Centre, Dongargaon and Dr. Rakesh Kumar Pandya (PW-1) conducted post-mortem over the dead body and submitted his report of Ex.P-1. In his report, the doctor found one incised wound over left side of the scalp, one incised wound on right side of the neck and one incised wound on right side of the back. On internal examination, he found that bone of the head was fractured, brain membrane torn, temporal bone was also fractured into two pieces and 11th rib was also broken into two pieces. All the injuries were ante-mortem in nature and cause of the death is shock due to excessive bleeding and due to the injuries caused on main organs i.e. liver & brain.

Sealed packet contained blood stained underwear was seized vide Ex.P-4. Blood stained axe was seized from the accused vide Ex.P-8. Plain soil and blood stained soil were seized from the spot vide Ex.P-9. Blood stained bed sheet and Lungi were seized from the cot where the deceased was sleeping. Seized articles, soil, clothings, axe, etc,, were sent to the Forensic Science Laboratory for chemical examination vide Ex.P-18. Report of the serologist is Ex.P-19. Report of the FSL is Ex.P-19A.

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# आदेश पत्रक

मामला क्रमांक G.A.970/95 सन् ~~200~~

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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After recording statements of witnesses, charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn committed the case to the Sessions Judge, Rajnandgaon. Charge under Section 302 was framed against the appellant and the appellant abjured his guilt. The prosecution in order to establish its case examined 12 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which the appellant denied the circumstances appearing against him and stated that he is innocent and he has been falsely implicated in the crime. He also stated that he found his wife and his deceased brother on a cot when he awoke all of a sudden as a result of which he lost balance and thereafter, he does not know what happened.

Homicidal death of deceased Sunderlal is not in dispute.

Learned counsel for the appellant submits that from perusal of the evidence available on record it would be evident that the alleged offence was committed by the appellant under the grave and sudden provocation as the appellant found his wife Jainabai in compromising situation with his brother deceased as a result of which he lost balance and attacked the deceased by an axe and thus, the offence, if any, falls within Exception 1 to Section 300 of the I.P.C.

On the other hand, learned Additional Public Prosecutor on behalf of the State/respondent supports the judgment of the trial Court and submits that the offence was committed with premeditation and planning and the deceased was done to death by his own brother while he was asleep in his house and therefore, the offence does not fall within Exception 1 to Section 300 of the I.P.C.

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# आदेश पत्रक

मामला क्रमांक G.A.970/95 सन् ~~200~~

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -4- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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We have heard learned counsel for the parties.

Dr. Rakesh Kumar Pandya (PW-1) who has conducted post-mortem has found three incised injuries over scalp, neck and back of the deceased. On internal examination, he has found the bones of the head broken and membrane of the brain ruptured. He has further found the temporal bone was broken in two pieces and he had also found 11th rib broken in two parts. Thus, from the post-mortem report it is evident that cause of death of the deceased was homicidal.

Mangal (PW-8) is father of appellant and deceased. He is the eyewitness. He has stated in his evidence that on the fateful day he and Sunderlal were sleeping side by side, the accused assaulted Sunderlal thrice by axe and thus caused his death. After hearing his cries 'Oh mother', he was awakened, thereafter, he saw the appellant and thereafter saw the incident and started weeping. He also abused appellant Lakhanlal by calling him murderer. He has stated that the dispute was regarding listing of the wife of the appellant to the deceased. Defence in cross-examination of this witness has not been able to elicit anything, which discredits the version of this witness. We find from the perusal of cross-examination that not a word has been suggested on behalf of the accused that on the fateful day in fact the deceased was found in the compromising situation with the wife of the accused. The statement of PW-8 is corroborated by the statement of PW-1, the doctor who has performed autopsy and who has found three incised wounds over the body of the deceased. The statement of this witness is corroborated by the statement of Shivlal (PW-5) who is real brother of the appellant and who has stated that his brother Lakhanlal had come to him at about 2 a.m. on the fateful day and confessed that he has killed Sunderlal.

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# आदेश पत्रक

मामला क्रमांक G.A.970/95 सन् ~~200~~

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -5- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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He had also found that the Tangia, which the accused was carrying, was stained with blood. He has further stated meeting of the village was convened, Kotwar was also called and in the presence of these persons, the appellant had confessed that he had assaulted Sunderlal by axe and has further stated that he is ready to come to Police Station. This version of this witness is corroborated by the first information report (Ex.P-17) wherein it is mentioned that villagers came to the Police Station along with the accused and the axe, and the report was lodged.

Dularva (PW-7) has also stated that the accused come to him personally along with the axe and had confessed that he had killed his brother Sunderlal. Thus, on the basis of the evidence of these witnesses, involvement of the appellant in causing the death of Sunderlal is established.

So far as the argument of learned counsel for the appellant that the appellant committed the above offence in a sudden and grave provocation as when he awoke on the fateful day at about 2 a.m. he found the deceased and his wife Jainabai in a compromising situation and therefore, the offence committed by the appellant falls within Exception 1 to Section 300 of the I.P.C. Learned counsel submits that the accused in his statement under Section 313 of the Cr.P.C. has narrated the circumstances in which the offence was committed by the appellant. He further submits that from perusal of defence witness Jainabai (DW-1), wife of the appellant, it would be evident that the deceased was found in a compromising situation with DW-1 which was seen by the appellant and as a result of this sudden provocation, the appellant committed the offence.

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# आदेश पत्रक

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित - 6 - | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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To bring the offence within the ambit of Exception 1 to Section 300 of the I.P.C. defence has to establish by material available on record that there was total deprivation of self-control as a result of some incident and as a result of which the offence is committed. Further in the instant case, from the evidence available on record and particularly from the evidence of Mangal (PW-8), father of the appellant, it is evident that on the fateful day the deceased was sleeping beside him in a separate cot when the appellant reached there armed with axe and started assaulting the deceased as a result of which the deceased died. Thus, the defence of the appellant, which has come for the first time at the stage of statement of the accused and at the defence stage that he lost his control after seeing the deceased in compromising situation with his wife and as a result of which he committed the offence, is not established. On the contrary, it is established that though the deceased had illicit relationship with the wife of the appellant prior to the incident, however, after Panchayat, on the undertaking of the deceased that he shall not have relationship with the wife of the appellant in future, the appellant started living with his wife. Therefore, defence of the appellant is apparently after thought and the same cannot be accepted.

Looking to the nature of injuries present over the person of the deceased, further considering the statement of Mangal (PW-8) who is the eyewitness and statements of witnesses before whom the appellant has confessed his guilt, we are of the opinion that the Court below has not committed any illegality in arriving at a finding that the appellant caused the death of the deceased intentionally by blowing three fatal blows over the vital parts of the deceased, as a result, the appeal fails being devoid of substance and the same is dismissed.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Dhirendra Mishra**
**Judge**